IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE V.GIRI

THURSDAY, THE 2ND AUGUST 2007 / 11TH SRAVANA 1929

CRL.A.No. 834 of 2004(C)

SC.185/2002 of THE COURT OF SESSIONS, THALASSERY
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APPELLANT:

FRANCIS @ PAPPACHAN,CONVICT NO.568,
CENTRAL PRISON, KANNUR.

BY ADV. LEIGY ANTONY (STATE BRIEF)

RESPONDENTS:

STATE OF KERALA.

BY ADV. PUBLIC PROSECUTOR SRI.NOBLE MATHEW

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 02/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & V.GIRI, JJ.

CRL.A.NO.834 OF 2004 (C)

Dated this the 2nd day of August, 2007

J U D G M E N T

KOSHY,J.

This appeal is filed by the sole accused in S.C.No.185/2002 on the file of the Court of Sessions, Thalassery. He was convicted under Section 302 of the Indian Penal Code and sentenced to undergo life imprisonment and to pay a fine of Rs.5,000/- and in default of payment of fine to undergo Rigorous Imprisonment for six months. The allegation of the prosecution was that, on 6.7.2001, at about 15.45 hours, in the kitchen of the house bearing No.404(A) of Ward No.X of Chapparappadavu Panchayat of the accused, he stabbed his son Vincent @ Wilson with a dagger (MO1) and committed murder and thereafter accused attempted to commit suicide by stabbing himself with the same dagger. Soon after the incident, injured was taken to the Pariyaram Medical College and on the way Vincent died. The accused was also taken to

the Medical College Hospital.

2. PW1 Shaju gave the F.I.Statement. He was a jeep driver and a close relative as the accused is his father's brother. He was informed by one Saji, neighbour regarding the incident. He went to that place with Saji and two brothers of the accused. They went to the house of the accused. He did not go. Later injured Vincent was brought by two persons and in his jeep he was taken to Medical College Hospital. But then he was declared dead by the Doctor. Thereafter he gave Ext.P1 F.I.Statement. He stated that he was not aware how the incident occurred. He further stated that the deceased and his brother PW3 are not in good terms. PW2 is a neighbour. According to him, the accused told him at about 3.14 p.m. that Vincent died and he is also dying and he went back to the house. He called PW3 who was residing nearby and after arranging a jeep, he went to the house of the accused. According to him, Vincent and accused were living in that house very friendly. PW3 son of the deceased deposed that he

was informed him regarding the incident. Immediately he went to the house and he saw his father lying down in the drawing room. In the kitchen room he saw Vincent lying injured and he poured water and took him to the Medical College Hospital in the jeep. He also saw the father but no weapons were seen nearby. He also stated that his sister send Rs.5,000/- for his father. He gave Rs.1,700/- and that was taken by Vincent and therefore there was enmity between Vincent and accused. He denied the suggestion that he was inimical towards his father as well as deceased Vincent. PWs.4 and 5 are sons of the deceased. PW4 was living about 10 kms. away from the place of occurrence and PW5 was in Delhi. They stated that the father was very cruel towards all children. PW4 stated that because of the cruelty of the father, their mother committed suicide and on a previous day he saw accused quarrelling with Vincent and threatening him by saying that instead of going to Delhi, he is going to heaven. PW5 who is employed in Delhi also stated that Vincent used to telephone him regarding the difficulties in living with the father and he wanted to go to Delhi

seeking some job and he was threatened by the father. PW6 is the daughter. She also stated that father is cruel towards all the children and about 11/2 years ago, he has inflicted injuries on the deceased. The other neighbours examined did not say anything regarding the behaviour of the accused or enmity or quarrel between accused and deceased. But none of the witnesses has seen the incident. MO1 knife was recovered at the time of taking the scene mahazar. In the 313 statement, the defence of the accused was that, while he was lying, somebody has inflicted a cut injury on him and he has not aware who inflicted injuries. Thereafter he heard some cries from the nearby room and he went there and saw his son injured and he informed PW2 the neighbour.

3. Ext.P8 is the wound certificate of the accused. It shows the following injuries:

Injury:- (1) Incised wound 4 x 0.5 cm below the (LL) lower chest
Bleeding + + Incised wound 2 x 0.5 cm above

Chest:- Air empty reduced on (LL) the first wound

The Doctor who issued the certificate was not examined. But it was marked through the Investigating Officer. There is no evidence to show how the injuries occurred on the accused and whether it is a self inflicted injury or not. But the only fact remains was that accused got injuries on the same day more or less at the same time and accused and deceased were living in the same house.

4. PW13, Doctor conducted post mortem. Ext.P7 is the post mortem certificate. Following are the ante mortem injuries found in the post mortem certificate:

Injuries (Antemortem):

1. Incised penetrating wound, 10 x 5 cm, vertical, on the front of left side of shoulder and chest, the upper end being 3 cm inner to the tip of shoulder. Both ends were sharply cut. Slight bruising of the wound margins seen. The wound, after cutting the left subclavian vessels, entered the chest cavity, through the second intercostal space and terminated without injuring the lung. The wound

was directed backwards and downwards for a total minimum depth of 5.5 cm. Left chest cavity contained one litre of blood with clots. Lung was collapsed.

2. Incised wound 5 x 2 cm, skin deep, on the back of left wrist.

Opinion as to the cause of death:

Died of penetrating injury of the chest involving major blood vessels.

The Doctor also certified that those injuries can be caused by MO1 knife.

5. There is no eye witness to the incident. Evidence adduced shows that children of the accused, PWs.3 to 6 were against the accused. According to the Public Prosecutor, following circumstances are against the accused. (1) accused and deceased were living together in the same house. (2) accused as well as deceased were got injuries more or less on the same day. (3) The evidence of other sons and daughter shows that deceased and accused were on inimical terms and

they used to quarrel each other (4) MO1 weapon was found out when scene mahazar was taken from the very same premises. (5) When the accused informed PW2 regarding the incident he did not tell that somebody has stabbed him or the deceased. He only stated that his son has died and he is dying. The case of the accused is that he was having 45 cents of property and the children were pestering him for getting the above property and that is why they were deposing against him. It was also pointed out by the counsel for the appellant that PW1 himself stated that there was dispute between PW3 and deceased and PW2 neighbour deposed that deceased and accused were living together peacefully and he was not aware of any dispute between them. This will show that the circumstances pointed out against him are not conclusive so as to hold that accused is guilty and no one else. It is argued that since accused and deceased were living together and share of the property were not given to other children, all of them might have been alleged to be against the deceased and accused and murdered only result of that conspiracy. It was also come out

in evidence that immediately after the incident PW4 started to live in that house. Accused was aged 73 at the time of occurrence. Now he is 77 years old. He has already suffered four years imprisonment. According to the evidence of PW4, accused consumed alcohol on that day. At the age of 74 whether he is able to inflict such an injury as seen from the post mortem certificate on an youngster is doubtful. Deceased was an able bodied 49 year old person as per the post mortem certificate. Incident occurred not in the night but at 3.45 p.m. The deceased and accused were living in the same house and all other children who gave evidence were demanding share in the property and even PW1 prosecution witness has stated that PW3 has got enmity towards the deceased. All independent witnesses examined stated that relation with accused and deceased were cordial. It is true that the accused was not able to identify who inflicted injuries on him. He is an old man. It may be true that he may be cruel and his behaviour to the sons also may be cruel. But none of the neighbours stated that his behaviour towards them were very bad. For convicting a

person n the basis of evidence or circumstances should be proved leaving no doubt and only conclusion possible from the evidence is that accused alone is guilty and nobody else is guilty. Mere suspicious circumstances alone is not enough to convict a person guilty of murder. It is true that commission of offence can be proved by circumstantial evidence. But as held by the Apex Court in ***Balwinder Singh v. State of Punjab (AIR 1996 SC 607)*** that in a case based on circumstantial evidence the court has to be on its guard to avoid the danger of being swayed by emotional considerations. For convicting the accused generally on the basis of circumstantial evidence, court should be satisfied that all the links in the chain are complete and the only hypothesis possible on the basis of the evidence adduced is that accused and the accused alone is guilty of the offence. (***See C.K.Raveendran v. State of Kerala (JT 1999 (9) SC 408)*** and ***Jaswant Singh v. State (Delhi Admn) (AIR 1979 SC 190)***. Circumstantial evidence should not only be consistent with the guilt of the accused but should also be inconsistent with his innocence as held by the

Apex Court in ***Mangaleshwari v. State of Bihar (AIR 1954 SC 715).*** It has been repeatedly held by the Supreme Court that the distinction between 'may be true' and 'must be true' is long and divides vague conjectures from sure consideration and each link must be established clear and unobjecting circumstances. In ***State of Kerala v. Ramachandran (1999 (3) KLT 512)***, Chief Justice Arijit Pasayat (as he then was) observed for the Bench as follows:

> It is settled principle of law that the circumstances relied upon by the prosecution must be fully established, and the chain of evidence furnished by those circumstances should be fully complete so as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused. In a case of circumstantial evidence not only various links of evidence should clearly establish guilt of the accused, but also it must be such as to rule out a reasonable likelihood of the innocence of the accused."

The Apex Court in ***Sharad v. State of Maharashtra (AIR 1984 SC 1622)*** described five principles for convicting an accused on the basis of circumstantial evidence which are as

follows:

1. the circumstances from which the conclusion of guilt is to be drawn should be fully established, as distinguished from 'may be' established.

2. the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;

3. the circumstances should be of a conclusive nature.

4. they should exclude every possible hypothesis except the one to be proved; and

5. there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

It is well settled principle that unlike direct evidence, indirect

circumstances which throw light, should lead from suspicion to certitude and care must be taken to avoid subjective pitfalls of exaggerating a conjecture into a conviction. In this case such consistent circumstances are absent.

Prosecution failed to prove that accused is guilty beyond reasonable doubt. In any event, appellant/accused is entitled to the benefit of reasonable doubt. Hence, his conviction and sentence are set aside. The accused is acquitted. The appellant/accused should be set free forthwith unless his custody is required in any other case.

Appeal is allowed.

J.B.KOSHY, JUDGE

V.GIRI, JUDGE

prp

J.B.KOSHY & V.GIRI, JJ.

CRL.A.NO.834 OF 2004 ()

J U D G M E N T

2nd August, 2007